Exhibit C

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In Re: : Case No. 05-60006

REFCO, INC., et al, :

: One Bowling Green
: New York, NY
Debtors. : March 14, 2006

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OFFICIAL COMMITTEE OF UNSECURED CREDITORS, : 05-03331

Plaintiffs, :

v. :

JOHN DOE, et al., :

Defendants. :

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TRANSCRIPT OF HEARING
BEFORE THE HONORABLE ROBERT D. DRAIN
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For the Debtor: ANTHONY W. CLARK, ESQ.
Skadden, Arps, Slate, Meagher & Flom, LLP
Four Times Square
New York, New York 10036

For Official Committee: LUC A. DESPINS, ESQ.
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(Appearances continued on next page)

settlement issues that --

FEMALE VOICE: We wish to talk among ourselves.

THE COURT: If you want to talk among yourselves, that's fine too.

MR. MOLONEY: Your Honor, I think if we could have a five minute recess --

MR. CLARK: How about ten?

MR. MOLONEY: -- followed by a chambers conference that would be asked.

MR. CLARK: That would be, I think, a very constructive --

THE COURT: All right.

I think to be fair I should include the Leuthold people in that as well and Mr. Dash.

Although my chambers are pretty small.

MR. CLARK: Could we make that ten minutes, Your Honor?

THE COURT: Yes, that's fine.

(Recess.)

(Proceedings resume at 6 p.m.)

THE COURT: Please be seated.

We've had -- for Bankruptcy Court-- a lengthy trial with numerous witnesses. We're up to 5,000 pages of exhibits and deposition testimony and the like on what had appeared to me and continues to appear to me to be an essential issue in

these Chapter 11 cases; that is, whether Refco Capital Management Ltd., or "RCM," one of the debtors here, is a "stockbroker" under the Bankruptcy Code, and consequently, is ineligible to be a debtor under Chapter 11, and must have its case proceed, if at all, under subchapter 3 of Chapter 7 of the Bankruptcy Code, the stockbroker liquidation provision.

It's a gating issue for two reasons, primarily because under the stockbroker liquidation provisions of subchapter 3 of Chapter 7, "customers" have a statutory priority as to "customer property" or property in the "customer fund," which is the fund of properties that may be attributable -- or of securities or cash that may be attributable to those customers' claims, even though, as is the case here, it is commingled and insufficient, potentially, to satisfy the claims in full and not identifiable customer property.

Given that priority, there's a potentially large swing in value between or among RCM's creditors, not only from the pockets of potentially FX-related creditors and derivatives or commodities-related creditors of RCM, but also even some customers who at this point may be comfortable with their net equity ratios of recovery *vis-a-vis* the other customers who engaged in securities trading.

That's an important issue not only economically but also, importantly, because under Section 1129(a)(7) of the Bankruptcy Code, a Chapter 11 plan cannot be confirmed over the

objection of a single creditor if that creditor would do better in a Chapter 7 case. And the potential swing in value here might well give individual creditors veto rights over a Chapter 11 plan.

It's also important because conversion of the case to Chapter 7 would result in the appointment of a trustee for RCM, and it has been the view of not only the customer group but other creditors of RCM that notwithstanding the general policy in this district and in the Second Circuit not to appoint multiple trustees in -- administratively consolidated cases, even where there are substantial intercompany claims, here, for a number of reasons, they have argued it makes sense to have an independent fiduciary for RCM.

Having heard all of the testimony and reviewed the exhibits and heard oral argument and read the excellent briefs submitted by all the parties in this contested matter, I'm prepared to rule on it.

However, as noted before we broke about an hour ago, I wanted to consider Mr. Despins' suggestion as well as the views of the other parties as to whether given the plain language of Section 1112 of the Code, which does clearly permit me to either defer a ruling or, perhaps less -- less clearly to rule but not actually order conversion for a while, I should in some form defer or delay.

We had a chambers conference with the -- I would say

the parties who have expressed the most interest in the RCM case including, creditors of other entities like Bank of America and the bondholders, as to their views as to whether it would make sense to give a Chapter 11 plan process time, and having heard the parties and considered the issues myself, I think that it is appropriate to, A, give the parties very clear guidance in the form of a preliminary ruling, which I fully expect not to change,regarding my decision on the motion by the moving customer group, but then to give the parties time subject to some conditions, in light of that ruling to see if they can negotiate a more comprehensive agreement or at least a basis for a Chapter 11 plan that might resolve all of the issues.

So what I'm going to issue now is, in fact, a preliminary ruling. I did not intend, except as I will specifically lay out, to issue any orders flowing from this ruling for some time, and I trust that in light of Section 1112 and the clearly expressed interests of all the interested parties, that all will recognize that this procedure is intended to give parties time to work together to maximize their collective recoveries in light of what I think the proper priority decision should be.

The Bankruptcy Code in Section 109(d) limits the entities that may be a debtor under Chapter 11, and it specifically provides that a stockbroker or a commodity broker

may not be a Chapter 11 debtor. See 11 U.S.C. § 109(d) as well as In Re: Bevill, Bressler & Schulman, Inc., 94 BR. 817, 828 (Bankr. D. N.J. 1989).

Liquidations of stockbrokers regulated by the SEC are subject to the provisions of the Securities Investor Protection Act, or SIPA, found at 15 U.S.C. § 78 *et seq.*, which incorporates certain provisions of the Bankruptcy Code, and generally contemplates the application of the Bankruptcy Code where SIPA itself is silent.

However, if a stockbroker is not regulated by the SEC, for example, because it is an intrastate stockbroker, its liquidation is governed by the provisions of subchapter 3 of Chapter 7 of the Bankruptcy Code. See HR Rep. No. 95-595 at 268 (1978), and 6 Collier on Bankruptcy, Paragraph 740.01 at 740-1.

The definition of "stockbroker" is set forth in Section 101(53A) of the Bankruptcy Code, and on its face it is pretty simple. It means a person, which includes entities, (A), with respect to which there is a customer as defined in Section 741(2) of the title 11and, (B), that is engaged in the business of effecting transactions and securities either for the account of others or with members of the general public from or for such person's own account.

In other words, the first element of the definition requires us to determine whether there is a "customer," and it

has been frequently stated that even if a court finds there is only one customer that satisfies that aspect of the definition, although clearly I have to find the existence of an actual customer, not a hypothetical one or not one, as some cases have stated, "in the air." See In Re: ESM Government Securities, 52 B.R. 372, 275 (S.D. Flor. 1985), affirmed 812 F.2d. 1374 (11th Cir. 1987), and In Re: SSIW Corporation, 7 B.R. 735, 738, N. 19 (Bankr. S.D.N.Y. 1980).

Effectively, the rationale for having a separate scheme under subchapter 3 giving a priority to customer claims for customer property is that customers as defined in Section 741(2) of the Bankruptcy Code would not be protected under the distribution scheme under Chapter 11 because their interests are substantially different than those creditors normally associated with cases under Chapter 11 and its distribution scheme, in that they -- that is, the securities customers under Section 741(2) effectively entrust their securities with the debtor. See HR. Rep. No. 95-595 at 319.

Focusing first on the definition of "customer," one begins and in all likelihood ends with the plain language of the statute, as the Supreme Court has instructed us to do in Ron Pair, 489 U.S. 235, 242-43 (1989).

A customer is defined in Section 741(2) of the Bankruptcy Code as:

"An entity with whom a person" -- that is, the debtor

-- "deals as principal or agent and that has a claim against such person on account of a security received, acquired or held by such person, again by the debtor," in the ordinary course of such person's business as a stockbroker, from or for the securities account or accounts of such entity."

And then the definition lists six ways in which such person may hold such securities; i.e., for safekeeping, with a view to a sale, to cover a consummated sale, pursuant to a purchase, as collateral under a security agreement, or finally for the purpose of effecting registration of transfer.

And then, secondly, the "customer" definition requires that such entity has a claim against the debtor arising out of either a sale or conversion of a security received, acquired or held as specified in subpart (a), or a deposit of cash, a security or other property with such person for the purpose of purchasing or selling a security as set forth in subpart (b).

It should be noted that an entity may be a customer if it satisfies either Subsections (a) or (b) under Section 741(2) notwithstanding that these conditions are joined in the conjunctive making it appear that both conditions need to be satisfied. Again, see ESM Government Securities, Inc., 812 F.2d. 1374, 1376 and In Re: Residential Resources Mortgages -- Mortgage Investment Corporation, 98 B.R. 2, 21 (Bankr. D. Ariz.

1989).

The definition of "customer" as it appears in SIPA is basically the same as the definition appearing in the Bankruptcy Code, and, therefore, cases construing SIPA's definition of customer under 15 USC §78(111)(2) are also applicable to the definition under Section 741(2) of the Bankruptcy Code. See In Re: Swink & Company, 142 B.R. 874, 876 (Bankr. E.D. Ark. 1992).

Although the legislative history states that the definition of the term customer was meant to encompass any person that interacts with the debtor in a capacity that concerns securities, whether such person is a cash or margin client of a broker or a dealer, see H.R. Rep. No. 95-595 at 385, and, although the term is not found in Section 741(2) or the analogous definition in SIPA, it has been long and widely held that "entrustment" of property with the broker or dealer or a broker-dealer is dispositive in determining whether a person or entity fits into the Bankruptcy Code's definition of customer.

I should, note before going further on the topic of "entrustment," however, that the customer definition very clearly does include parties who have margin accounts and engage in financing activities with their securities with a -- with a stockbroker. This is stated repeatedly by Collier at -- for example, Paragraph 741.03[3][a], in which the editors of

Collier state that customer securities are either fully paid for or are held in a margin account. Further, it's clear that -- in fact, from the operative provisions of subchapter 3 that such securities may be commingled and that they need not be segregated. In fact, that's the reason for the priority in customer property. As Collier says in Paragraph 741.03[3][a], again:

> "Under the Bankruptcy Code, all customers, regardless of the nature of their accounts, are entitled to share in the pool of customer property (which is, in effect, the sum of specifically identical identifiable property in the single and separate fund) to the extent of their respective net equity claims."

Again, at Paragraph 741.03[3][a], the editors say:

> "Under the Bankruptcy Code and SIPA, both margin and cash customers share ratably in the fund of customer property to the extent of their respective net equity claims. As the fund of the customer property is comprised of *fungible* property, all customers have an equal claim to that pool."

Indeed, under Paragraph 741.04[2], the editors of Colliers go so far as to say:

> "Under the Bankruptcy Code, fungibility is carried to its greatest degree in permitting all customers to

share ratably in the cash proceeds of customer property irrespective if particular customer securities were, in fact, available (i.e., present) to be liquidated. Thus, a customer whose securities have been lost, stolen, improperly hypothecated or otherwise unavailable to the trustee will still share in customer property based upon the customer's net equity claim."

See Collier, ¶ 741.05[3].

Again, "entrustment" of customer property is a dispositive element of Section 742(2) as well as under SIPA. See In Re: Hanover Square Securities, 55 B.R. 235, 238 (Bankr. S.D. NY 1985), citing a number of cases from the Second Circuit and others, which hold in each case that the purported customer was really engaged in a different type of relationship with the debtor such as that of a lender, citing SIPA v. Executive Securities Corporation, 556 F.2d. 98-99 (2nd Cir. 1977), in what the purported customer was really a lender to the debtor, SEC v. F.O. Baroff, Inc., 497 F.2d. 280, 284 (2nd. Cir. 1974), in which the purported customer was rally an investor in the debtor.

That is, entrustment of one's securities with another is said to distinguish a true customer relationship from various other dealings with broker-dealers that might be shoe-horned into the definition but do not, in fact, satisfy the

statute. See also In Re: Baker & Getty Financial Services, Inc., 106 F.3d. 1255, 1260 (6th Cir. 1997).

Entrustment in this context essentially means that the transaction must be related to the purported customer's investment, trading or participation in the securities market. Again, see In Re: Hanover Square Securities, Inc., 55 B.R. at 238. And in that context it is often said without much analysis the transaction must have created a fiduciary relationship. See In Re: Stalvy & Associates, Inc. (phonetic), 740 F.2d. 464, 471 (5th Cir. 1985). A fiduciary relationship exists when one person is under a duty to act for or to give advice for the benefit of another upon matters within the scope of the relationship. Flickinger v. Harold C. Brown & Company, 947 F.2d. 595, 599 (2nd. Cir. 1991).

It has been held that generally a broker does not owe fiduciary duties to a purchaser of securities, its customer. A. Ronald Sirna, Jr., P.C. Profit Sharing Plan v. Prudential Securities, Inc., 964 F. Supp. 147, 152 (S.D.N.Y. 1997). However, fiduciary duties may exist between a broker and customer when the broker has discretion over the customer's property or has been, again, given direction to act and has accepted a responsibility to act on a customer's behalf. See Press v. Chemical Investment Securities Corp., 988 F. Supp. 375, 386 (S.D.N.Y. 1997), which was later affirmed by the Second Circuit in a case I'll discuss in a moment. See also

Lowenbran v. L.F. Rothschild (phonetic), 685 F.Supp. 336, 334 (S.D.N.Y. 1998).

More specifically, the Second Circuit held in the Press v. Chemical Investment Sec. Corp., 166 F.3d. 529, 536 (2nd. Cir. 1999) that the fiduciary obligation that arises between a broker and a customer as a matter of New York common law is limited to matters relevant to affairs entrusted to the broker. The scope of the entrusted affairs generally is thus limited to the completion of the security transaction. *Id.*

In some respects then, or in large measure, the requirement, to the extent there is one under Section 741(2), that the debtor be a fiduciary to its customer to qualify the customer as a "customer" is largely redundant or overlaps with the notion that the customer entrusts its securities with the broker to effectuate a transaction, because, again, in the words of Press, it's in that context that a broker becomes a fiduciary; that is, in completing the securities transaction that the customer has asked.

It appears clear to me in reading the customer agreements that the moving customer group members signed with RCM that this was the nature of the relationship between them and RCM. As Paragraph A1 of the customer agreement says, you hereby -- I'm sorry. Authority to act:

"You hereby authorize Refco to purchase, sell, borrow, lend, pledge, or otherwise transfer financial

instruments, including any interest therein for your account in accordance with your oral or written instructions.

"The authority hereby conferred shall remain in full force until written notice of its revocation is received by Refco."

The testimony of Mr. York and others was also to the same effect, that his -- his business was not proprietary but was in taking customer instructions in effectuating transactions in securities.

The objectants to the motion nevertheless contend that there was no entrustment here for a number of reasons. In essence, all of them boil down to an argument that the movants knew or should have known that they ran the risk of RCM not being able to return their securities, not only as an economic matter but as a legal matter.

The first such argument is that it was clear that RCM was an unregulated -- I'm sorry, was unregulated under the U.S. securities laws, and that is, that it was not a broker-dealer like its affiliate, RSL, and, therefore, that the customers would not be protected under SIPA, for example, or in respect of various requirements of the U.S. securities laws that pertain to margin trading and the like that a broker-dealer engages in if it is regulated by the U.S. securities laws.

It is clear, however, that subchapter 3 of Chapter 7 applies to unregulated -- I'm sorry, to entities who are

unregulated under the U.S. securities laws. The legislative history I referred to earlier clearly makes that point in respect of intrastate stockbrokers. It's also implicit and explicit in the holding of the Baker & Getty case, which applied to an unregulated U.S. entity whose affiliate was regulated. See 106 F.3d. 1255.

I'd also note a quote from -- on this point from SEC v. Ambassador Church Finance/Development Group, Inc., 679 F.2d 608, 614 (6th Cir.) that Judge Brozman excerpted in her Hanover Square Securities case at 55 BR 240. There, the Sixth Circuit said:

> "The appellants make much of the fact that [the broker-dealer] did not maintain a customer account in the name of the church and did not charge a commission for selling the incentive bonds. It is not likely that Congress, in seeking to protect the assets of small transaction customers of broker-dealers, intended to make eligibility for protection depend on whether the broker complied with rules of the SEC or practices of the trade. These are matters over which the broker has complete control. The trusting customer is not to be penalized for choosing a careless, unethical or dishonest broker."

Now, obviously, that quote referred to unsophisticated customers, but I think the point is that, as

Baker & Getty made it clear, the very purpose of subchapter 3 was to fill in the gap wherever it existed with SIPA, so long as SIPA remained in place, and in other instances where customers engaged in securities transactions through their brokers or broker-dealers.

To the extent there's a suggestion in the record that this view be limited to U.S. intrastate brokers and not to brokers that are like RCM, foreign companies or at least foreign incorporated companies, I don't accept that view. The statute makes no distinction between U.S. or domestic corporations on the one hand and foreign corporations on the other. Moreover, RCM itself conducted almost all of its business from the United States. It employed United States management and employees and its business until it collapsed was to the benefit of the U.S. economy and to U.S. markets, and I don't see a basis, particularly in the absence of any such basis in the statute, for distinguishing such a business from intrastate brokers and excluding RCM's customers to the extent they're entitled to protection from the statute on that basis.

Secondly, the objectors to the motion point to the customer agreement, and in particular, Paragraph B of that agreement where they had a margin, to suggest that the customers of RCM normally took the risk that RCM could do whatever it pleased with the securities and other property that they left with RCM in their customer accounts notwithstanding

Section A of the customer agreement, quoted above, and therefore, that there was no real entrustment.

Having read the two paragraphs in Section B of the customer agreement, I don't accept that argument. It appears clear to me from the language of that agreement and those provisions that those provisions apply in the situation where customers have engaged in margin or financing transactions with RCM or its affiliates and that what the customers have given to RCM in those paragraphs is a security interest in their property until those transactions are paid off and the debt satisfied.

As Paragraph B2 states:

"Refco's sole obligation shall be to return to you such cash, like amounts of similar cash, securities and other property where the cash value thereof in the event of any liquidation of collateral to the extent they're not deemed to be collateral to secure transactions entered into pursuant to this agreement with any Refco entities or have not been applied against obligations owing by you to Refco entities whether as a result of liquidation of positions in any transactions entered into pursuant to this agreement or otherwise."

Although there are distinctions between this language and language in RSL's customer agreements and Mr. Litt's Schwab agreement, the essential point is the same, which is that these are provisions common in the industry, common to margin

accounts where the customers granted Refco a security interest in their property and expected its return once the margin loan or financing was satisfied.

As I stated earlier in quoting from Collier, subchapter 3 clearly contemplates that "customers" includes those who engaged in margin trading and provides for the netting out of short margin positions before access to the customer fund. So I do not see anything in these two paragraphs that will take the moving customer group members out of the notion that they entrusted their securities with -- or cash to purchase securities with RCM.

In addition, the objectants point to the boilerplate on the second page of RCM's standard form of confirmation of trades the customers received, as well as to Paragraph D2 of the customer agreement, which provides that:

"This agreement and insofar as such terms are recorded in a confirmation, each such confirmation and all amendments to any of such terms which together form the agreement between the parties shall together constitute a single agreement between the parties.

"The parties acknowledge that all transactions governed by the agreement are entered into in reliance upon the fact that all terms constitute a single agreement between the parties."

The confirm back-page boilerplate arguably goes

beyond the interpretation of the two paragraphs of the customer agreement dealing with margin loans that I discussed a moment ago, but not a whole lot. If one were to rely on the integration argument made by the objectors, however, it does say that RCM does not segregate any collateral or other property deposited with it. But that's really not a surprise since, again, from the language I quoted in Collier and the statute itself, Section -- I'm sorry, subchapter 3 of Chapter 7 doesn't require segregation, and in fact deals with situations where customer securities were not segregated, and there was plenty of testimony that it's more often than not industry practice not to segregate into specific accounts collateral but to permit hypothecation of securities and cash and other property at least when a customer is trading in margin.

There is in addition an ambiguity in Paragraph 1 of the confirmation slip boiler-plate, which arguably refers not only to RCM's right to sell, pledge, hypothecate, assign, invest or use such collateral, but also says or property deposited with it, but I agree with the customer group that to read out customer status based on Paragraph A1 of the customer agreement on that ambiguous language would be a real stretch, given that it appears on the back of a confirm and deposited could be read as referring again to collateral. Particularly, I conclude this because of the language referring to the two --the customer agreement and the confirm-- as being integrated

agreements. What again Section D2 says is:

"This agreement and insofar as such terms are recorded in a confirmation...they're integrated agreements. And I believe that refers back to D1 of the customer agreement, which says that transactions governed by the customer agreement shall be promptly confirmed in writing by the parties, defined term confirmations. The confirms that the parties received were just that, then, confirmations of the individual transactions, and it's logical to assume, and in fact, there's testimony in the deposition of Mr. Paglia (phonetic) that this was the assumption, that that memorialization of the individual transactions, as opposed to the boilerplate dealing generally with the use of margin collateral and other property, was what was meant to be covered by the integration provision in D2 of the customer agreement.

It's also argued that the customer agreements as well as other documents that the parties were aware of referred to RCM trading with the customers "as principal" or in a "principal" capacity. At least this was if not always RCM's practice, it was almost always RCM's practice.

It's therefore argued both in terms of applying the -- or construing whether the moving customer group members were "customers" that again they didn't entrust their securities with RCM because RCM was acting with them as a "principal." The same point is also made in connection with the stockbroker

definition itself, which I'll address in a moment.

But let me say now that while the language clearly says what it says and the testimony of Mr. York and Ms. Kraker was very clear as well as other testimony by RCM officers and employees that RCM traded as a "principal" and that was part of its business model, it is also crystal clear to me that it did so only to effectuate transactions as instructed and directed by its customers.

That is, RCM did not compete with its customers either in the marketplace in the sense of proprietary trading nor in terms of trying to strike the best bargain in a securities purchase or sale that it could as a true principal would in dealing with a customer.

Rather, it took the customer's order, went out to the market and filled that order, in each case, acting as the party to the transaction with the customer on the one hand and with the market party on the other.

As Mr. York testified, he would in this process always try to get the customer the best deal he could within the price range quoted to him. He was not and RCM was not compensated on the basis of the profit that it made at the customer's expense in selling to or buying from a customer a security for either the highest price in the case of a sale or the lowest price in case of a purchase as a true principal would, but, rather, on the agreed spread or markup between the

range of buy or sell-order prices that the customer would give it and what it could get from a counterparty in the marketplace.

As far as 741(2)(A) is concerned, my interpretation fo RCM's relationship with its customers is buttressed by the plain meaning of the statute, or the plain language of the statute which says that the debtor may deal with the customer "as principal or agent."

I also think that it's generally supported by the definition of a "broker" elsewhere in the Code -- I'm sorry, elsewhere outside of the Code, either in SEC no action letters are in the UCC.

For example, Official Comment 14 to UCC Section 8-102, which distinguishes the term "broker" from the term "securities intermediary," states:

"The terms 'securities intermediary' and 'broker' have different meanings. Broker means a person engaged in the business of buying and selling securities as agent for others or as principal."

Similarly, the SEC no action letter that I referred to in oral argument earlier with Mr. Henkin that appears at 2000 West Law 1742088 dated October 11, 2000 states that Section 384 of the Securities Exchange Act of 1934 defines a broker as any person that is "engaged in the business of effecting transactions and securities for the account of

others."

It then goes on in that context to say:

"A person effectuates transactions if he or she participates in securities transactions at key points in the chain of distribution. Such participation includes among other activities, selecting the market to which a securities transaction will be sent, assisting an issuer to structure prospective securities transactions, helping an issuer to identify potential purchasers of securities, soliciting securities transactions including advertising and participating in the order-taking or order-routing process; for example, by taking transaction orders from customers.

"Factors indicating that a person is engaged in the business include, among others, receiving transaction-related compensation, holding one's self out as a broker, as executing trades or as assisting others in completing securities transactions and participating in the securities business with some degree of regularity."

In addition, too, according to this no-action letter, indicating that a person is effecting transactions, soliciting securities transactions is also evidence of being engaged in the business.

In the light of that, I think Mr. York's testimony on a number of accounts is quite telling. He made it very clear that he was a salesman. He said he never turned away a

customer-- that the credit department might have, but he never did. He wasn't actually aware of whether the credit department had turned away a customer, but he never did.

He also made it clear that he was taking the customers' instructions at all times; in effect, effectuating their orders for their account. He stated that he would not reveal the counterparty to a transaction because he believed that, if he did that, his customers would then go to that counterparty because he would no longer be necessary. In essence, he was in the middle of the market.

He also made it clear that his compensation or RCM's compensation, rather, was for effectuating the transactions on the customer's behalf either in the form of commission, or in the fixed income area, in the form of a spread or markup that had previously been negotiated with the customer.

Finally, he testified that the phrase in Section A1 of the customer agreement that Refco will act for your account was not a term of art, and that it simply meant what it says.

He was not the only witness on this point, of course. There's deposition testimony to the effect that Refco's business was the execution of transactions for others. See not only Mr. York's deposition at 65, 235, but also Mr. Weiss' deposition at 53, and also Mr. Weiss' deposition at 57 and 58, where he stated that RCM's business, including, the securities area, was essentially to "fill 'em"; that is, to fill orders

and "bill 'em"; that is, bill the customer for filling those orders.

Mr. York also made it clear more than once that he always got customers back their property when they asked for it, up until the date of RCM's collapse. In addition, it's quite clear that one of the functions RCM performed was to execute corporate actions on the customer's behalf, including in connection with corporate restructurings or refinancings or tender offers, sending letters to the issuer of securities confirming the customer's beneficial ownership of those securities.

All of these facts and all this evidence to me indicates clearly that while in a limited sense RCM acted as a principal in taking some execution risk away from the client, RCM effectuated transactions for the account of the client and not for its own account except in the sense that it expected to make money for what it was doing, because after all it was in business, but that money was in the form of a commission or payment for effectuating the transaction directed by the client.

The Bevill Bressler case at 67 B.R. 557 contends that it's irrelevant for purposes of whether someone is a customer, whether the customer traded "with" or "through" the broker-- and as an aside it's clear from the recitation of facts that in Bevill Bressler the debtor there hypothecated and commingled